

NEBRASKA DEPARTMENT
OF INSURANCE

NOV 26 2003

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, RECOMMENDED ORDER
PETITIONER,)	AND ORDER
)	
VS.)	CAUSE NO. A-1518
)	
CINDY WINKLEBLACK,)	
)	
RESPONDENT.)	

This matter came on for hearing on the 6th and 12th day of November, 2003, before Martin W. Swanson, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Mike Boyd. Cindy Winkleblack (Respondent) was present and was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed insurance producer whose registered address with the Department of Insurance is New Horizon Insurance, Inc., P.O. Box 560, 707 California Street, Tilden, NE 68781.
2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
3. Respondent received notice of this hearing by virtue of her personal appearance.

4. A market conduct examination of Respondent was conducted at her above-referenced agency office by Department examiners pursuant to Neb.Rev.Stat. §44-1527 and 44-5901 through 5910. The examination focused on insurance transactions involving Respondent over the last few years.

5. A client of Respondent, Warren Renter, signed an insurance application with an effective date of June 25, 2002 for farm insurance that included property, liability, employer liability and inland marine coverage. A review by Department examiners of Respondent's records on this matter failed to disclose when it was submitted to the insurance company for processing; nor could Respondent produce any record that showed the date submitted. The examiners did later obtain a copy of the policy Declarations Page for this farm policy #QF 52869, that shows it was processed by One Beacon Insurance Company (One Beacon) on September 17, 2002. On August 28, 2002 the insured's son, Allen, reported an incurred loss to Respondent at her insurance agency. Due to the reported loss, Respondent had an agency check sent to the insurer the following day for \$4,990.50, which represented approximately ½ (\$2,635.50) of the premium on this farm insurance policy that was set up as a "direct bill" for the premium. Additionally, Respondent sent in the other \$2,355 to be applied to an auto insurance policy. The insured/applicant shortly thereafter paid Respondent for the amount of premium Respondent submitted to the insurer. On or about October 8, 2002 Respondent's agency received the insured's loss information, that included an invoice for the repair work on the farm equipment damaged on August 28, 2002, but the examiners found no indication that Respondent submitted this claim information to the insurer at that time. Information obtained by the Department examiners from One Beacon during the examination revealed that the company sent their "pay or die" cancellation notice on November 7, 2002 advising that this policy would cancel on

November 25, 2002 if the premium due on the policy had not been received by that date. On December 26, 2002, Respondent's agency received a cancellation notice processed on December 7, 2002 from the insurer that this insured's farm policy #QF 52869 was canceled "flat" (back to its inception in June 2002). Respondent stated to the examiners that upon receipt of this cancellation notice, Warren Renter was contacted. On January 6, 2003, Mr. Renter faxed a request to Respondent to cancel his farm and auto policies effective January 1, 2003 because he had obtained replacement policies with Travelers Insurance. Mr. Renter's request was forwarded by Respondent to One Beacon on January 10, 2003. On January 18, 2003, Respondent mailed photos and a copy of the loss report for Mr. Renter's August 28, 2002 loss to the insurer and requested that they process the claim. Mr. Renter had heard nothing from the insurer regarding his claim for the August 28, 2002 reported loss. Mr. Renter contacted One Beacon on March 3, 2003 and was advised by One Beacon that his farm insurance policy was not in force when the loss was incurred. The insured then contacted Respondent and advised her that the farm policy was not in force. Respondent knew or should have known about this issue three months before. The next day, Respondent issued an agency check refunding to the insured the \$4,990.50 premium he had paid her. Respondent did not reconcile her Agency's bank account records and she was unaware that her August 28, 2002 premium check submitted to the insurer for Mr. Renter's farm and auto insurance had not been cashed, and therefore her client had been without farm insurance coverage from June 2002 until he obtained the replacement coverage referred to above with Travelers Insurance effective January 1, 2003.

6. Another insured client of Respondent, Sunshine Ranch, had two annual insurance policies, one a farm policy and the other an auto policy that were to renew effective April 17, 2002. Respondent apparently billed the client for these policies' annual premiums that she subsequently

received, and deposited Sunshine Ranch's \$20,304.00 payment on March 27, 2002 in her agency account. These were direct bill policies that listed Respondent's agency mailing address at P.O. Box 560, Tilden, NE 68781-0560 as the insured's billing address. Respondent made the initial installment premium payment on each policy, as well as a second installment payment on the auto policy, on the policy billings from One Beacon Insurance. However, Respondent failed to make further installment premium payments on either policy which resulted in farm policy #QF 37588 and auto policy #AS 36202 each being canceled for non-payment of premium. The cancellation occurred after receiving two notices of intent to cancel for non-payment of premium, effective August 19, 2002. Respondent's failure to pay these policies' premiums with the funds she had been provided by this insured resulted in the insured being left without insurance coverage under the farm policy for over eight months and the auto policy for ten months. Respondent's client obtained replacement farm insurance coverage effective May 8, 2003 and auto insurance coverage effective June 17, 2003 with Farmers Mutual Insurance Company of Nebraska. The client eventually received a refund of \$11,830, which represented the unearned portion of the premium the insured had paid to the Respondent on these two policies that Respondent failed to submit to the insurer.

7. An insured client of Respondent, Tractor Ranch, had two annual insurance policies. Policy #QF 31513 was a farm policy and was to renew effective February 26, 2002; and policy #AS 36236 was a business auto policy and was to renew effective March 4, 2002. Respondent billed the client for these policies' annual premiums that she subsequently received, and deposited Tractor Ranch's \$7,405.00 payment on April 17, 2002 in her agency account. These were direct bill policies that listed Respondent's agency mailing address as P.O. Box 560, Tilden, NE 68781-0560 as the insured's billing address. Respondent made a late installment premium payment on the auto policy billing from One Beacon Insurance which resulted in auto policy #AS 36236 being canceled

for non-payment of premium effective March 4, 2002. That policy was reinstated effective March 4, 2002 by the agent's payment to the insurer of the past due premium on April 8, 2002.

Respondent made one further installment premium payment on the business auto policy in July 2002, but failed to make any further installment payment on that policy which resulted in its subsequent cancellation for non-payment of premium effective September 30, 2002. Respondent made the first two installment premium payments on the farm policy billings from One Beacon Insurance, but failed to make any further installment payments on farm policy #QF 31513 which resulted in that policy's ultimate cancellation for non-payment of premium, after receiving an intent to cancel for non-payment of premium notice, effective September 30, 2002. Respondent's failure to pay these policies' premiums with the funds she had been provided by this insured resulted in the insured being left without insurance coverage under the farm policy for seven months and the business auto policy for over eight months. Respondent's client finally obtained replacement farm insurance coverage effective May 8, 2003 and business auto insurance coverage effective June 17, 2003 with Farmers Mutual Insurance Company of Nebraska. The client eventually received a refund of \$1,890, which represented the unearned portion of the premium the insured had paid to Respondent on these two policies that she failed to submit to the insurer.

8. Another insured client of the Respondent, Bruce and Susan Staub, had two insurance policies. One was a farm policy #QF 50817, and the other a business auto policy #CTAW 48082. They were both to renew effective September 13, 2002. They were agency-billed policies for which Respondent failed to bill the insured. Nor did Respondent submit the premium to One Beacon Insurance to keep either policy in force, even though the Declaration page on farm policy #QF 50817 states its premium payment plan is "Agency Prepaid." This caused both policies to subsequently be canceled for non-payment of premium effective February 12, 2003. This left the

insured without insurance coverage under either policy for over two months until the client obtained replacement coverage through another insurance agent on or about April 21, 2003.

9. Another insured client of Respondent, Anson Farms, Inc. (Lester and Jill Anson), had an annual commercial auto insurance policy #048035045 09/21 issued by Allstate Insurance Company, which was to renew effective September 21, 2002. This was a direct bill policy that listed Respondents' agency mailing address, P.O. Box 560, Tilden, NE 68781-0560, as the insured's billing address. Respondent had requested the insured's mailing address be changed to the Respondent's agency mailing address in March 2000. Allstate sent the renewal policy's billing to Respondent's agency mailing address. The insured had a copy of the Allstate commercial auto policy as well as the auto liability insurance cards for the vehicles that were to be covered under the policy from September 21, 2002 to September 21, 2003. The insured did not receive a billing from either the insurer or the agent, but assumed he had coverage due to having been sent the renewal policy and auto insurance liability cards by Respondent. This renewal policy's "pay or die" cancellation billing notice from Allstate stated that this policy would cancel October 21, 2002 if the premium due on the policy was not received was sent on or about October 1, 2002 to Respondent's agency mailing address as Respondent had previously requested. The policy cancellation notice for non-payment of premium therefore would have gone to Respondent's agency mailing address. Although this notice was received by Respondent on October 7, 2002, it was never paid. Since the renewal policy premium billing was not paid, the policy non-renewed for non-payment of premium effective September 21, 2002. This left the insured without insurance coverage on those commercial vehicles for eleven months until the client learned that his commercial auto insurance policy had lapsed effective its renewal date. Anson Farms subsequently obtained replacement coverage with Allstate.

10. During the course of the hearing, it became evident that Respondent was the owner/operator of New Horizon's Insurance Agency and, in fact, had the ability to hire and fire employees. Additionally, Exhibit 3, the market conduct report (report), indicates that Respondent and her husband, John D. Winkleblack, own the agency. John Winkleblack is not actively involved in the business, although during the course of the hearing, Mr. Winkleblack did attempt to settle certain accounts at dispute in this matter. During the course of testimony, Respondent testified that she had terminated an employee of her agency for reasons not specifically explained. Respondent also appeared to allege that it was this former employee's fault as to why certain pieces of mail were never seen by Respondent.

11. During the course of cross-examination of the Respondent, Respondent admitted that in regard to the Warren Renter account, she never checked to see if One Beacon received the premium. Respondent admitted that the failure to check bank records to determine whether or not an insurance company received premium is fiscally irresponsible.

12. Respondent was also asked, with regard to the Tractor and Sunshine Ranch accounts, whether or not she was fiscally irresponsible for all of these accounts. Respondent replied that she "was irresponsible" for not making sure that premiums had been paid for these accounts. Respondent also claimed that she did not know about the lack of premium payment. Respondent had asserted that a former staff person at her office may have had caused, in some manner, the problems with these accounts. While this may have occurred, Respondent nonetheless had ultimate control over the entire staff and office thus control over the files and accounts and knew or should have known that premium had not been paid on these accounts and that the policies had lapsed.

13. Respondent also admitted, with regard to the issues arising from the Anson Farms account that had she known that the policy had lapsed, she would have paid to keep the policy in place. Respondent claimed that she had not seen certain papers come into her office because of a former employee, nonetheless, Respondent had a duty as the owner and operator of New Horizon's Insurance Agency to make sure that all premiums were paid and that policies did not lapse.

14. Respondent, in a reply to the market conduct examination, noted that she was "made aware of some items, where (sic) not exactly up to state standards. I learned several things that will allow us to do business properly." See E14a.

15. In response to the market conduct examination, Respondent has made certain changes in the conduct of her business in order to conform it to the requirements of Nebraska law. Some of these changes include the installment of new software, the hiring of an accountant firm, and the creation of a new office procedure for the timely delivery of policies to their clients. See E14a.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Respondent.

3. Respondent violated Neb.Rev.Stat. §44-4059(1)(h) in eight separate instances. Neb.Rev.Stat. §44-4059(1)(h) provides that the Director may revoke or suspend an insurance producer's license and/or impose a fine if an insurance producer has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state.

4. It appears that Respondent is attempting to run her agency in a more efficient and compliant manner. It is the sincerest hope that Respondent continues in this effort. However, Respondent is acting only in reaction to the market conduct examination. Her violations occurred because of her prior inactions. Moreover, because several clients lacked coverage for significant amounts of time due to Respondent's failure to pay the premium to the various insurance companies and the fact that Respondent knew or should have known about these issues, a significant fine and suspension are in order.

RECOMMENDED ORDER


Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Insurance Producer's License be suspended for a period of not less than forty-five calendar days effective immediately and that Respondent is to pay a \$5,000 fine. The \$5,000 fine is due within thirty days from adoption of this recommendation by the Director of Insurance of the State of Nebraska. The failure to pay this fine within thirty days may result in further administrative action by the Department of Insurance. It is further recommended that Respondent shall, in addition to all other duties required by law and this order, submit proof, satisfactory to the Nebraska Department of Insurance, that she has continued to implement the new business practices she began after the market conduct examination. That proof shall include, but is not limited to, a submission from an independent accounting firm that all premium received from her clients is forwarded to the insurers in order to effectuate coverage. This submission shall be made to the Nebraska Department of insurance every month for a period of three years. Failure to submit this material may result in additional administrative actions against Respondent. The first submission shall occur on the first month after Respondent has completed her forty-five (45) day suspension.

The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until

Respondent has complied with all provisions of this order.

Dated this 26th day of November, 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Martin W. Swanson
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska, Department of Insurance vs. Cindy Winkleblack, Cause No. A-1518.

Dated this 26th day of November, 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent

at P.O. Box 560, Tilden, NE 68781-0560, by certified mail, return receipt requested, on this 2nd

day of ~~November~~, 2003.

December

Tracy A. Gruhn